

July 21, 2003

**Additional Views of Democratic Members
on H.R. 2738, U.S. - Chile Trade Agreement Implementation Act**

The U.S.-Chile Free Trade Agreement

The U.S.-Chile Free Trade Agreement (FTA) includes strong and comprehensive commitments by Chile to open its goods, agricultural and services markets to U.S. producers. The agreement includes commitments that will increase regulatory transparency and act to the benefit of U.S. workers, investors, intellectual property holders, businesses and consumers.

At the same time, the economic impact of the Chile agreement is likely to be minuscule. The U.S. International Trade Commission estimates that the Chile FTA will account for just five one hundredths of one percent of U.S. gross domestic product (GDP).

While some of the provisions in the FTA could serve as a model for other agreements, a number of provisions clearly cannot. In some instances, this is because the provision, while workable in the Chile context, is not appropriate for FTAs with other countries, where very different circumstances prevail. In other cases, it is because the policy being pursued by the Administration is just plain wrong.

In fact, one of the concerns raised in the consideration of both the Chile and Singapore FTAs has been that the Administration is beginning to use some of their provisions as models for other FTAs, for example the Central America Free Trade Agreement (CAFTA), where the conditions make it inappropriate to do so.

We cannot change in the implementing bill major provisions in the basic agreements specifically negotiated between the parties. Unfortunately, the provisions relating to core labor and environmental standards and investment issues, raise serious concerns. For example, there are separate dispute settlement rules that place arbitrary caps on the enforceability of those provisions. This is a mistaken approach, the difficulties of which would only be magnified if used as a precedent for future FTAs involving very different circumstances.

That is doubly true of any attempt to use as a model for other FTAs the "enforce your own law" standard used in Chile and Singapore. The laws of Chile and Singapore essentially reflect core internationally recognized labor rights and these countries' have a history of enforcing their laws. How they are applied does vary in the two countries, reflecting the different characteristics of the two nations. At the same time, there is little practical concern that these countries will backtrack.

Chile is very different from many other FTA negotiating partners, including most Central American countries and many others that would be a part of an FTAA. Use of the "enforce your own law" standard is invalid as a precedent — indeed it contradicts the purpose of promoting enforceable core labor standards — when a country's laws clearly do not reflect international standards and when there is a history, not only of non-enforcement, but of a hostile environment towards the rights of workers to organize and bargain collectively. Using this standard in different circumstances will lead to totally different results.

The Office of the U.S. Trade Representative (USTR) has undertaken this misapplication of the "enforce your own law" standard by using it in the core labor proposal tabled in CAFTA and Free Trade Area of the Americas (FTAA). USTR justifies this action by arguing that the Trade Act of 2002 does not allow it to go further. That interpretation is erroneous. Under Trade Promotion Authority, USTR can negotiate a provision to adopt and enforce the five core International Labor Organization (ILO) labor standards (bans on child labor, forced labor, discrimination, and the rights to associate and bargain collectively).

Expanded trade is important to this country and the world. Benefits will accrue to a broad range of persons in our nation and other nations if trade agreements include enforceable commitments on basic labor standards. With such a provision, workers in developing countries, including Central America, have the opportunity to become real partners in economic progress and help develop the expanded middle class so vital to those nations, and to the United States.

With regard to other provisions that the Administration has stated it intends to use as a model, we are seriously concerned about any such use and we will be watching carefully their implementation. These provisions include: (1) certain intellectual property provisions that lock in the current state of U.S. law, thereby making it much more difficult for Congress to change those rules in the future; (2) the investor-state provisions and the issue of whether the USTR has adequately ensured that foreign investors will not have greater rights than provided under U.S. law; and (3) the provisions on capital controls and the question of whether USTR's and Treasury's effort to eliminate a country's flexibility to impose on an emergency basis temporary capital controls is sound policy and should be pursued in future FTAs. At a recent hearing, USTR Zoellick made comments that indicated that the USTR had changed its position on this issue.

Finally, one area where we would like to see improvements in future FTAs is in the rules of origin. The Committee report states that the Agreement contains "strong, simple, and transparent rules of origin." The rules of origin used for the Agreement are different than those for the NAFTA and for other previous FTAs. It is extremely difficult for Congress to gauge whether the rules of origin strike the correct balance between the dual goals of preventing transshipment/ensuring economic activity in the FTA partners and ease of compliance and

administration. While we trust that the USTR negotiators are seeking the correct balance, the Committee should request the ITC to conduct a study into the operation of various types of rules of origin and their impact on trade.

The U.S.-Chile Implementing Legislation

The Committee Democrats pressed for the Committee to hold the July 10, 2003, traditional "mock" mark-up. The informal legislative drafting process ensures active congressional involvement in shaping the legislation necessary to implement changes to U.S. law that are required by trade agreements. This process was used in the case of implementing legislation for the North American Free Trade Agreement (NAFTA), the Uruguay Round agreements, and prior trade agreements dating back more than 20 years.

The mock markup reflects a broadly agreed-upon and well-established practice. Further, it enables the Members of the Committee and the public to understand more fully and clearly the content of the legislation, raise questions about it, and offer "mock amendments" when necessary. Ensuring that the legislative process for the implementing legislation is as open as possible is consistent with the great importance the United States has attached to improving the transparency of international trade agreements and foreign government laws and regulatory practices.

The implementing legislation only addresses those portions of the FTA where implementation requires changes to U.S. law. With respect to these provisions, it is important to note the improvements that we have been successful in making to several controversial areas.

One set of troublesome issues in both the U.S.-Chile and U.S.-Singapore FTAs related to H1-B immigration visas. Although not under the jurisdiction of this Committee, we worked actively with our colleagues in both parties on the Judiciary Committee to make meaningful changes to these provisions. The most significant changes include: (1) inclusion of the Singapore and Chile visas within the overall H-1B cap; (2) a requirement that employers pay the H1-B fee (currently \$1000) for the initial visa, and for every third renewal of the visa (these fees are used to fund training programs for workers in the United States); (3) a requirement that employers submit labor attestations not only for the initial visa, but also for every third renewal; (4) a clarification in the Statement of Administrative Action that visas issued under the Chile and Singapore programs are temporary, and that laws governing temporary visas, including requirements that the visa holder show that the stay is temporary, continue to apply; and (5) a clarification in the Statement of Administrative Action on the scope of occupations covered.

Finally, as first drafted, the bills did not require the Administration to consult with trade advisory committees, ITC, or Congress when exercising discretionary authority granted by the legislation. The bill has been amended to require consultation with each of these entities, helping to provide a greater role for Congress and a more balanced and well-founded trade policy.

This process has worked for improving the problematic provisions in the implementing legislation.

Additionally, we are concerned that the legislative implementation of the rules of origin may create unnecessary confusion. The rules of origin in the Chile and Singapore FTAs differ in a number of ways, some substantive, but most non-substantive. In a number of instances, the implementing legislation mirrored the language in the agreements, despite the fact that there were no substantive differences intended. We are concerned that the differences in legislative language between two contemporaneously considered bills could create confusion for Customs and traders. Generally, Congress does not use different language when it means the same thing. Accordingly, we encourage Customs to issue harmonized implementing regulations for the Singapore and Chile FTAs to the maximum extent possible.

U.S. Trade Policy for Economic Growth and Jobs

Even as we support these agreements, it is vital that American trade policy restore a focus on opening markets that achieve the largest gains for Americans. In particular, numerous barriers to exports of American goods and services and other unfair trade practices have been allowed to stand for too long. These barriers include international piracy of American copyrights and other intellectual property, discrimination by China against key American high-tech exports, and Japan's discrimination against myriad of manufactured and agricultural goods. A more concerted effort needs to be undertaken to reduce these barriers that cost American jobs and exports.

Additionally, there is a great deal at stake in negotiations currently ongoing under the auspices of the World Trade Organization — the so-called Doha round. These negotiations should be conducted carefully to achieve potential significant benefits to American manufacturing, agriculture and services, and to prove benefits to both the United States as well as other developed countries, and developing countries. Ways and Means Democrats are monitoring these negotiations carefully and urge a greater focus by the Administration ensuring real and meaningful progress at the upcoming Ministerial meeting in September in Mexico.

Additional Views on H.R. 2738
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